

**FILED**

**NOT FOR PUBLICATION**

**AUG 15 2006**

UNITED STATES COURT OF APPEALS CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

BOARDWALK CONDOMINIUM  
ASSOCIATION, a California non-profit,  
mutual benefit corporation,

Plaintiff - Appellant,

v.

TRAVELERS INDEMNITY COMPANY  
OF ILLINOIS, an Illinois corporation; et  
al.,

Defendants - Appellees.

No. 04-56564

D.C. No. CV-03-00505-WQH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
William Q. Hayes, District Judge, Presiding

Argued and Submitted June 8, 2006  
Pasadena, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Boardwalk Condominium Association (Boardwalk) appeals the district court's grant of summary judgment in favor of Travelers Indemnity Company (Travelers) in deciding Boardwalk's claim for insurance benefits.

1. The district court erred in granting summary judgment in favor of Travelers because there was a genuine issue of material fact regarding whether Boardwalk's "loss [was] continuing and progressive . . . [or] was a series of discrete events."

*See Central Nat. Ins. Co. v. Superior Court*, 2 Cal.App.4th 926, 933-34 (1992).

Accordingly, application of the manifestation rule was unwarranted. *See id.*

Whether Boardwalk was on notice of a property condition that should have been investigated is also a disputed question of fact, *see Mills v. Forestex Co.*, 108 Cal.App.4th 625, 644 (2003), rendering summary judgment inappropriate. *See Long v. County of Los Angeles*, 442 F.3d 1178, 1185, 1191 (9th Cir. 2006).

2. Boardwalk's request that this court exercise its supervisory power under 28 U.S.C. § 2106 to reassign this case to a different district court judge on remand is denied. The record does not reflect that the district court judge is biased in any way or should have difficulty in setting aside his previously expressed views on the

issues presented. *See Mustang Marketing, Inc., v. Chevron Products Co.*, 406 F.3d 600, 610-11 (9th Cir. 2005).

**REVERSED AND REMANDED.**